WRP Asia Pacific Sdn Bhd v Tenaga Nasional Bhd

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FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NOS 02(F)-4 OF 2011(W) AND 02(F)-3 OF 2011(W)
ARIFIN ZAKARIA CHIEF JUSTICE, RAUS SHARIF PCA AND SURIYADI FCJ
12 DECEMBER 2011

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Civil Procedure — Judicial review — Whether case outside ambit of judicial review — Electricity meter at appellant's factory found tampered with — Appellant substantially undercharged for electricity usage — Respondent notified appellant it had committed offence under Electricity Supply Act 1990 — Payment of undercharged amount of electricity usage demanded — Appellant's bid to obtain leave to file judicial review of respondent's decision denied — Whether appellant's dispute with respondent a private law matter — Whether leave to file for judicial review rightly refused

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Acting on an information received, the respondent raided the appellant's factory and found its electricity meter had been tampered with causing it to fail to record the correct usage of electricity. The tampering had resulted in the appellant being undercharged by RM5,485,463.87. Pursuant to s 38 of the Electricity Supply Act 1990 ('the Act'), the respondent sent the appellant a notice that it had committed an offence under s 37(3) of the Act as well a bill for the said undercharged amount ('the two documents'). A letter enclosing the two documents required the bill amount to be settled within 14 days failing which electricity supply would be disconnected. The appellant applied to the High Court under O 53 of the Rules of the High Court 1980 for leave to apply for judicial review of the respondent's decision with respect to the letter and the two documents. The High Court dismissed the leave application holding, inter alia, that there was no element of discretion in the issuance of the notice under s 38(1) of the Act; that once there was evidence of meter tampering, the respondent was empowered to disconnect electricity supplied subject to the issuance of the notice. The High Court held s 38 was drafted to specifically safeguard the respondent's interest and allow it to take immediate action to prevent misuse of electricity. It was not open to the appellant to challenge the power given to the respondent under the Act to disconnect electricity supply and to demand the amount claimed. The respondent's appeal to the Court of Appeal against the High Court's decision was dismissed on the ground the relationship between the appellant and the respondent was purely commercial or contractual. As the relationship came within a private law environment, the Court held the appellant could not challenge the respondent's decision by judicial review, which was a public law remedy. The Federal Court granted the appellant leave to appeal to it on the question whether judicial review could lie

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against the respondent to challenge the exercise of its power under s 38 of the Act read together with other relevant sections of the Act and/or the Licensee Supply Regulations 1990.

Held, dismissing the appeal with costs and affirming the order of the High Court:

(1) The appellant failed to establish that the impugned matter fell under the realm of public law. The court was satisfied the matter fell squarely under private law and that the basis of the appellant's appeal was outside the ambit of judicial review. An arguable case would not be disclosed and the orders sought for granted at the High Court if leave was given (see para 26).

(2) The respondent had established a private relationship with the appellant when they mutually signed a contract of supply. The relationship was commerce-based and the appellant was expected to keep its part of the bargain by not tampering with the electricity meter which would cause losses to the respondent. The Court of Appeal was right in concluding the facts came within a commercial or contractual environment (see paras 20–21).

(3) The letter and the two documents were sent out due to the wrongful tampering of the electricity meter on account of a breach of private law (see para 22).

(4) Section 38 of the Act empowered the respondent to discontinue electricity supply based on the subjective finding of its employee that an offence had been committed under s 37(1), (3) or (14). The respondent had complied with all the necessary requirements under the Act. If it was later found to have breached its contractual or statutory obligation, the appellant could take action against the respondent. Hence, the appellant was not without a remedy (see para 25).

[Bahasa Malaysia summary

Bertindak atas maklumat yang diterima, responden menyerbu kilang perayu dan mendapati meter elektriknya telah diusik menyebabkan ia gagal untuk merekodkan penggunaan elektrik yang betul. Usikan tersebut telah menyebabkan perayu dikenakan bayaran kurang sebanyak RM5,485,463.87. Berikutan s 38 Akta Bekalan Elektrik 1990 ('Akta'), responden menghantar notis kepada perayu bahawa ia telah melakukan kesalahan di bawah s 37(3) Akta dan rang undang-undang bagi amaun yang kurang tersebut ('kedua-dua dokumen tersebut'). Satu surat yang melampirkan kedua-dua dokumen tersebut memerlukan jumlah bil diselesaikan dalam tempoh 14 hari di mana jika gagal, bekalan elektrik akan dipotong. Perayu memohon kepada Mahkamah Tinggi di bawah K 53 Kaedah-Kaedah Mahkamah Tinggi 1980 untuk mendapatkan kebenaran bagi permohonan semakan kehakiman

keputusan responden berkenaan surat dan kedua-dua dokumen tersebut. Mahkamah Tinggi telah menolak pegangan permohonan cuti dengan memutuskan bahawa, antara lain, tiada unsur budi bicara dalam pengeluaran notis di bawah s 38(1) Akta; apabila terdapat bukti pengusikan meter, responden telah diberi kuasa untuk memotong bekalan elektrik tertakluk kepada pengeluaran notis tersebut. Mahkamah Tinggi memutuskan bahawa s 38 telah digubal khusus bagi melindungi kepentingan responden dan membenarkan ia untuk mengambil tindakan segera dalam mengelakkan penyalahgunaan elektrik. Ia tidak terbuka kepada perayu untuk mencabar kuasa yang diberikan kepada responden di bawah Akta untuk memutuskan bekalan elektrik dan untuk menuntut amaun yang dituntut. Responden merayu kepada Mahkamah Rayuan terhadap keputusan Mahkamah Tinggi telah ditolak atas alasan hubungan antara perayu dan responden adalah semata-mata perdagangan atau bersifat kontrak. Oleh kerana hubungan tersebut timbul dalam persekitaran undang-undang persendirian, Mahkamah memutuskan bahawa perayu tidak boleh mencabar keputusan responden melalui semakan kehakiman, yang merupakan remedi undang-undang awam. Mahkamah Persekutuan membenarkan perayu merayu atas persoalan sama ada semakan kehakiman boleh dijalankan ke atas responden bagi mencabar menjalankan kuasanya di bawah s 38 Akta tersebut dibaca bersama dengan seksyen lain yang berkaitan dengan Akta dan/atau Peraturan-Peraturan Bekalan Pemegang Lesen 1990.

Diputuskan, menolak rayuan dengan kos dan mengesahkan perintah Mahkamah Tinggi:

(1) Perayu gagal untuk membuktikan bahawa perkara yang dipersoalkan jatuh di bawah bidang undang-undang awam. Mahkamah telah berpuas hati perkara tersebut terjumlah tepat di bawah undang-undang persendirian dan bahawa asas rayuan perayu adalah di luar bidang kuasa semakan kehakiman. Satu kes yang boleh diperdebatkan tidak akan didedahkan dan perintah-perintah yang dipohon diberikan di Mahkamah Tinggi jika kebenaran telah diberikan (lihat perenggan 26).

(2) Responden telah mewujudkan hubungan peribadi dengan perayu apabila mereka saling menandatangani kontrak bekalan. Hubungan tersebut adalah berasaskan perdagangan dan perayu telah dijangka untuk mengotakan sebahagian daripada tawar-menawar dengan tidak menyalahgunakan meter elektrik yang akan menyebabkan kerugian kepada responden. Mahkamah Rayuan betul dalam menyimpulkan bahawa fakta-fakta wujud dalam persekitaran perdagangan atau kontrak (lihat perenggan 20–21).

(3) Surat dan kedua-dua dokumen telah dihantar terhadap usikan salah disebabkan oleh meter elektrik pelanggaran undang-undang persendirian (lihat perenggan 22).

(4) Seksyen 38 Akta memberikan kuasa kepada responden untuk menghentikan bekalan elektrik berdasarkan dapatan subjektif pekerja bahawa suatu kesalahan telah dilakukan di bawah s 37(1), (3) atau (14). Responden telah mematuhi kesemua keperluan yang di bawah Akta. Jika ia kemudiannya didapati telah melanggar obligasi kontrak atau undang-undang, perayu boleh mengambil tindakan terhadap responden. Oleh itu, perayu tidaklah tanpa remedi (lihat perenggan 25).]

Notes

For cases on judicial review in general, see 2(2) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 4797–4807.

Cases referred to

Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors [2010] 3 MLJ 145, FC (refd)

Chief Constable of North Wales Police v Evans [1982] 3 All ER 141, HL (refd)

Claybricks & Tiles Sdn Bhd lwn Tenaga Nasional Bhd [2007] 1 MLJ 217; [2006] 4 CLJ 892, CA (refd)

IRC v National Federation of Self-Employed and Small Businesses Ltd [1982] AC 617, HL (refd)

Mohamed Nordin bin Johan v Attorney-General, Malaysia [1983] 1 MLJ 68; [1983] CLJ (Rep) 271, FC (refd)

Queen v Minister of Energy and Director General of Electricity Supply ex parte Robert Guildford [1998] EWHC Admin 203, QBD (refd)

Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional Bhd & Ors [2006] 5 MLJ 60; [2006] 1 CLJ 927, CA (refd)

Tenaga Nasional Bhd v Ong See Teong & Anor (suing on their behalf and for all parties who are the owners or tenants of the Kampung Sungai Terentang — which was served with a notice under ss 13 and 16 of the Electricity Supply Act 1990) [2010] 2 MLJ 155, FC (distd)

Tenaga Nasional Bhd v Tekali Prospecting Sdn Bhd [2002] 2 MLJ 707; [2002] 3 AMR 3082, CA (refd)

Yahya bin Kassim v Government of Malaysia & Anor [1997] 3 MLJ 749; [1997] 4 AMR 3687, CA (refd)

Legislation referred to

Companies Act 1965
Courts of Judicature Act 1964
Electricity Supply Act 1990 ss 13, 37(1), (3), (14), 38, 38(1)
Specific Relief Act 1950
Rules of the High Court 1980 O 53, O 53 rr 2(4), 3, 3(6)

Appeal from: Civil Appeal Nos W-02–647 of 2010 and W-02–649 of 2010 (Court of Appeal, Putrajaya)

Robert Low (CL Tan and Ahmad Shahrizal with him) (Ranjit Ooi & Robert Low) for the appellant.
Shamsul Bolhassan (Nadia Hanim Tajuddin with him) (Attorney General's Chambers) for the attorney general's chambers.
Raja Ahmad Mohzanuddin Shah bin Raja Mohzan (Azmi & Associates) for the putative respondent.

Suriyadi FCJ (delivering judgment of the court):

[1] Leave was applied for at the High Court by the appellant pursuant to O 53 r 3 of the Rules of the High Court 1980 ('the Rules'), for a judicial review of a decision made by Tenaga Nasional Bhd ('the respondent'), a decision which aggrieved the appellant. The High Court dismissed the leave application. The appellant then filed the relevant appeal to the Court of Appeal but was dismissed too.

[2] Being dissatisfied, the appellant forthwith applied for leave to appeal to the Federal Court, with the question for determination being:

> Whether judicial review lie against Tenaga Nasional Bhd to challenge the exercise of its power conferred pursuant to s 38 of the Electricity Supply Act 1990 (read together with other relevant sections of the Electricity Supply Act 1990 thereto and/or applicable regulations pursuant to the Licensee Supply Regulations 1990 thereto)?

[3] The appellant was successful in its application and leave to appeal was granted. We subsequently heard the appeal proper and today is for decision of the appeal.

BACKGROUND FACTS

[4] The appellant runs and operates factories, and manufactures amongst others, disposable latex and synthetic gloves. On information received, the respondent on 14 November 2009 raided the appellant's factory premises, and there found the electricity meter having been tampered with, causing it to fail to record the correct usage of electricity. The respondent then discontinued the electricity but reconnected it some eight hours later.

[5] Vide a letter dated 22 January 2010, in which were enclosed a Form A notice dated 22 January 2010 and a bill carrying No 2197471 ('the two documents'), all issued pursuant to s 38 of the Electricity Supply Act 1990 ('the Act'), the respondent notified the appellant that as a result of a meter inspection carried out on 14 November 2009 at the factory premises, it was discovered

that the meter located there was found tampered with. The Form A notice was issued in relation to the commission of an offence under s 37(3) of the Act. This tampering had resulted in inaccurate reading of the electricity consumption thus undercharging up to RM5,485,463.87. The bill details out the amount. Through the letter the appellant was then instructed to pay that amount within 14 days, failing which the electricity supply would be disconnected on 5 February 2010.

[6] It was due to the dissatisfaction of the decision in the 22 January 2010 letter and the two documents that the appellant filed the application for a judicial review under O 53 of the Rules. But the appellant had to circumvent the first hurdle ie the leave stage. It failed. The High Court when dismissing the appellant's application for leave held, inter alia, that there was no element of discretion in the issuance of the notice under s 38(1) of the Act. Under it, once it was discovered that there was evidence of meter tampering, the respondent was empowered to disconnect electricity supplied, subject to the issuance of a notice. The High Court too opined that s 38(1) of the Act was drafted to specifically safeguard the interest of the respondent and allow it to take immediate action to prevent misuse of electricity. It was not open to the appellant to challenge the power given to the respondent under the Act to disconnect electricity supply and to demand the amount claimed.

[7] At the Court of Appeal the appellant's appeal was dismissed on the ground that the relationship between the appellant and the respondent was purely commercial or contractual. As the relationship came within an environment regulated by private law it was not open to the appellant to challenge the respondent's decision by judicial review, which was a public law remedy. In dismissing the appellant's appeal, the Court of Appeal relied on *Claybricks & Tiles Sdn Bhd lwn Tenaga Nasional Bhd* [2007] 1 MLJ 217; [2006] 4 CLJ 892. This case relates to an erinford injunction application to prevent the TNB from disconnecting the supply of electricity to the plaintiff's premises. Zulkefli Ahmad Makinudin JCA (as he was then) when dismissing the appeal remarked:

> TNB's s 38 notice to disconnect the electricity supply for offences enumerated in s 7 need not prove the offences in court. The reason is that, any purported act to review such act will defeat the swift enforcement under the Act where electricity supply needs to be severed immediately to avoid further illegal usage by the perpetrator. The nature of the act taken by TNB arose from a commercial obligation on the part of the consumer rather than TNB's obligation under public law.

[8] Zulkefli Ahmad Makinudin JCA also elaborated that s 38(1) of the Act was enacted to give effective powers to TNB to instantly prevent any offence that may be committed and not to be left unattended or unabated. It provided

specifically for the preservation of TNB's interest and empowers TNB to act expeditiously, thereby preventing misuse such as theft of electricity supplied by TNB.

REASONS FOR OUR DECISION

[9] An application for judicial review is a particular procedure by which an aggrieved person can seek to review a public authority's decision, with judicial review referring to the power to supervise the activities, inclusive of the latter decision. Express statutory power is vested in the High Court by the Courts of Judicature Act 1964, the Specific Relief Act 1950 and the Rules of the High Court 1980 to deal with this supervisory power. The basis of the application will be based on principles of public law. In a nutshell, and which is relevant to the question for determination, whether an entity is subject to judicial review depends very much on whether its activities are subject to supervision according to rules and principles of public law.

[10] Here, being dissatisfied with the decision of the respondent, the appellant filed the judicial review application, to include amongst others the order of certiorari (the others being for a declaration, prohibition order and an injunction). As fundamentally judicial review relates to the issue of jurisdiction, the appellant desires to establish that the respondent had acted without authority, thus rendering the decision as contained in the letter to be void. A court order of certiorari will formally declare that decision to be ineffectual in law.

[11] This application was filed despite the respondent not being a public authority. How then can the appellant succeed? By analogy MP Jain had occasion to author in *Administrative Law of Malaysia and Singapore* (2nd Ed), at p 462, 'certiorari is issued not only to a statutory body but even to a non-statutory body which is under a duty to act judicially and performing a public duty'.

[12] For purposes of its application the appellant had alluded to the statutory route of O 53 of the Rules. Under this order two stages are anticipated, with the leave stage being the first, to be followed closely by the substantive hearing after succesfully obtaining leave at the High Court. At the leave stage, on a quick perusal of the material available, if the court thinks that subsequently at the substantive hearing stage an arguable case may be disclosed, and the relief sought may be granted, leave should be granted (*IRC v National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617). In Malaysia, the Federal Court in *Mohamed Nordin bin Johan v Attorney-General, Malaysia* [1983] 1 MLJ 68; [1983] CLJ (Rep) 271 when allowing the appeal, opined that 'the point taken was not frivolous to merit refusal of leave in limine and

justified argument on a substantive motion for certiorari'. Without the need to go into depth of the abundant authorities, suffice if we state that leave may be granted if the leave application is not thought of as frivolous, and if leave is granted, an arguable case in favour of granting the relief sought at the substantive hearing may be the resultant outcome. A rider must be attached to the application though ie unless the matter for judicial review is amenable to judicial review absolutely no success may be envisaged.

[13] Returning to the mainstream, the appeal before us relates to the first stage ie the leave application. With both the High Court and the Court of Appeal having rejected the leave application, we now begin by resolving certain preliminary matters, namely whether the appellant has the necessary locus standi, whether it has complied with the time factor, and whether the facts and circumstances before us are amenable to judicial review.

[14] For purposes of deciding whether the appellant has the locus standi to file the judicial review application O 53 r 2(4) of the Rules is relevant. It reads:

> *Any person who is adversely affected by the decision* of any public authority shall be entitled to make the application.

[15] Appreciating the above provision, the person entitled to make the application has to be any person who is adversely affected by the decision. As the facts are quite straightforward, no serious judicial activism is required here. The appellant claimed that it was directly and adversely affected by the decision of the respondent. Apart from the matter of the huge sum of RM5,485,463.87 which was required to be paid, there was also of the threat hanging over its head like the Sword of Democles, in the event there was failure to comply with the letter. Any discontinuance of the electricity supply would cause untold grief to the business of the appellant. A possibility of a prosecution being undertaken under s 37(3) of the Act could not be discounted either. Having considered the appellant's submission we are satisfied that it is not a mere busybody but a person that will be adversely affected by the decision of the respondent.

[16] We now touch on the legal requirement of whether the application was made on time. For this purpose, O 53 r 3(6) of the Rules is relevant, and it reads:

> An application for judicial review shall be made promptly and in any event *within 40 days from the date when grounds for the application first arose or when the decision is first communicated to the applicant* provided that the Court may, upon application and if it considers that there is a good reason for doing so, extend the period of 40 days.

[17] To regurgitate the facts, the respondent's decision was communicated to the appellant vide a letter dated 22 January 2010, and attached to it are the two documents. The appellant's application was made on 3 February 2010. In short this application was made within the 40 days period as required by the rules and hence within time (*Yahya bin Kassim v Government of Malaysia & Anor* [1997] 3 MLJ 749; [1997] 4 AMR 3687).

[18] With the basic requirements satisfied, the all important question to be confronted, and which will forthwith resolve the question for determination, is the legal interpretation of whether the respondent is excluded from any judicial review due to the restrictions of O 53 of the Rules. This provision legislates that only a decision made by a public authority is amenable to judicial review. It is common ground that the respondent is a corporate body but provides public functions regulated by the Act. So, does judicial review lie against the respondent for the decision as reflected in the letter dated 22 January 2010 and the two documents though not a public authority? The answer depends very much on whether the action of the respondent falls within the public law environment (*Tenaga Nasional Bhd v Tekali Prospecting Sdn Bhd* [2002] 2 MLJ 707; [2002] 3 AMR 3082). To quote Gopal Sri Ram JCA when discussing whether TNB was amenable to judicial review:

> So what answer is to be given to the question: does judicial review lie against the appellant? In our view, the answer lies in two words. It depends.
>
> If the activity of the appellant in the private law sphere is called into question, eg the wrongful allotment or issuance of shares, the alleged wrongful removal of a director and the like, then, plainly judicial review will not lie. On the other hand, if the activity complained of falls within the public law environment, then of course judicial review will be available.

[19] It is admitted that the respondent's decision in issuing the letter dated 22 January 2010, and the two documents were exercised pursuant to a power conferred by the Act particularly s 38. In truth when the respondent issued the letter and the two documents, it was then exercising a power of an authoritative body, though we must with haste clarify that not every decision of such body is suitable for judicial review (*Tenaga Nasional Bhd v Ong See Teong & Anor (suing on their behalf and for all parties who are the owners or tenants of the Kampung Sungai Terentang — which was served with a notice under ss 13 and 16 of the Electricity Supply Act 1990)* [2010] 2 MLJ 155). In *Ahmad Jefri bin Mohd Jahri @ Md Johari v Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 3 MLJ 145, James Foong FCJ had occasion to state:

> … It is widely accepted that not every decision made by an authoritative body is suitable for judicial review. To qualify there must be sufficient public law element in the decision made.

[20] The respondent, which was corporatised under a privatisation scheme, is owned by many different persons including the government and has acted like any limited company under the Companies Act 1965 in the circumstances of the case (*Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional Bhd & Ors* [2006] 5 MLJ 60; [2006] 1 CLJ 927). The respondent here had established a private relationship with the appellant when they mutually signed a contract of supply. This relationship thus was commerce-based, with the appellant as the consumer, and the respondent the energy supplier company. The respondent would expect the appellant to keep its part of the bargain by not tampering with the electricity meter that would cause losses to it.

[21] The Court of Appeal likewise was right in concluding that the facts came within a commercial or contractual environment. We are in total agreement with the factual finding of the Court of Appeal.

[22] Factually we also hold the view that the letter and the two documents were sent out due to the wrongful tampering of the electricity meter on account of a breach of private law. In *Queen v Minister of Energy and Director General of Electricity Supply ex parte Robert Guildford* [1998] EWHC Admin 203) the court had occasion to opine as regards the involvement of private law, thus:

> The guidance given by the second respondent to electricity suppliers in this context is in my judgment entirely within the meaning properly to be given, in particular, to Schedule 7 para 11 of the Electricity Act 1989. Accordingly the primary declaration sought by the applicant must be refused.
>
> As to the standard of proof, I see no reason to dissent from the test accepted by the court in the case of *Smith* and propounded by the Northern Ireland Courts in the case of *Sherlock*. *Tampering with an electricity meter falls to be treated as a breach of private law,* as well as a criminal offence. (Emphasis added.)

[23] This appeal is unlike the case of *Tenaga Nasional Bhd v Ong See Teong & Anor* [2010] 2 MLJ 155, where TNB in exercise of its responsibility to the public pursuant to s 13 of the Act, was freed of private law when it could enter any land to undertake whatever was necessary for the purpose of maintaining, repairing or upgrading any licensed installation or any part thereof. And without any relationship existing between TNB and the land owners at that. TNB could fell, remove vegetation and do all other things necessary to fulfill the above purpose as it was carrying out a public function under the Act.

[24] Perusing the appellant's submission we failed to find any complaints on the procedural exercise undertaken by the respondent which led to the issuance of the documents (*Chief Constable of North Wales Police v Evans* [1982] 3 All ER 141). In its submission the appellant ventilated that by the respondent's decision:

> it had clearly made a *decision* capable of affecting the appellant in the following aspects. First by making a *finding* that there is tampering and offences commited pursuant to the ESA. Secondly by *deciding* and coming to the conclusion to exercise the power to disconnect the electricity supply. Thirdly, by *computing* the amounts alleged to be undercharged in arriving at the purported sum. [Emphasis added.]

[25] Let us now scrutinise the letter. Even though the effect of the letter is quite harsh, s 38 of the Act empowers the respondent to discontinue the supply of electricity based on the subjective finding of its employee if any offence has been found committed under s 37(1), 37(3) or 37(14). Despite holding the status of being the only supplier of electricity in the country the respondent has clearly complied with all the necessary statutory requirements. It served the appellant not only with the letter of 22 January 2010 but also the two documents, documentations which are necessary prerequisites under the Act. In the event the respondent was later found to have breached its obligation under the contract or its statuatory obligation the appellant may take up action against the respondent. Hence, the appellant is not without a remedy.

CONCLUSION

[26] Even though satisfied that the appellant has successfully established the issue of locus standi and factor of time, it failed to establish that the impugned matter falls under public law realm. In fact we are satisfied that the matter falls squarely under private law. In conclusion, despite the earlier error committed by the respondent when it disconnected the electricity supply for eight hours, we are convinced that the basis of the appellant's appeal is outside the ambit of judicial review. We are satisfied that an arguable case will not be disclosed and the orders sought for granted at the High Court if leave was given (*Mohamed Nordin bin Johan v Attorney-General Malaysia*; *Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional Bhd & Ors* [2006] 5 MLJ 60).

[27] We therefore conclude that the question for determination must be answered in the negative and therefore dismiss the appeal with costs. The order of the High Court is affirmed.

Appeal dismissed with costs and order of the High Court affirmed.

Reported by Ashok Kumar